

ELEMENT 3: RECORDKEEPING

A program for recordkeeping as required by the Export Administration Regulations (EAR).

OBJECTIVE: To ensure export control documents are maintained in an accurate and consistent manner and are available for inspection as required by the EAR.

PROCEDURE: The firm's ability to monitor the effectiveness of an export control system depends on the maintenance of complete and accurate records. This element provides a system to ensure that both administrative and transaction records are maintained in accordance with the EAR.

The individual responsible for export control should determine where and how records are maintained and develop a filing method that will allow for the most control and accessibility. Consideration should be given to the development of centralized recordkeeping systems, in which records required under the EAR are quickly identifiable. Departments involved in export activities should be well informed of proper procedures for the maintenance of documents. Regardless of the type of filing system developed, all records must be made available to Department of Commerce personnel as required in Section 762.7 of the EAR.

Types of records to be maintained will depend on the nature of the firm's activities and how items are controlled for export under the EAR. The retention period for records is 5 years from the date of the export, reexport, or any other termination of the transaction as defined in Section 762.6 of the EAR.

Any EMS should include both a description of the process for record maintenance (including locations and personnel responsible) and a list of records to be maintained. The following is a sample list of some administrative and transaction records that are to be retained with their pertinent EAR citation(s). In addition to the specific situations indicated, Part 762 of the EAR provides the overall recordkeeping requirements.

Among the ADMINISTRATIVE records to be maintained:

BXA 748P, BXA 748P-A, BXA 748P-B & accompanying attachments riders or conditions	748.10 (j)
BXA-711 Statement by Ultimate Consignee and Purchaser	748.12(e), 762
International Import Certificates	748.10(j), 776

People's Republic of China End-User Certificate	748.10(c)(3) 748.10(j)
License Exception TSR Written Assurance	740.3(d)(1)(i)

In addition, BXA strongly recommends the use and retention of the following:

- o a current copy of the EAR with all Export Administration Bulletin (EAB) updates filed.
- o a written copy of the current EMS and related manuals.
- o a copy of the most current Denied Persons List and all Federal Register notices identifying parties added to, or deleted from, the list.
- o log used to ensure return of commodities previously exported under license exception TMP.
- o log used to ensure License Exception LVS limits are not exceeded.

Among the TRANSACTION records to be maintained:

Commercial Invoices with the proper destination control statement	762.2 758.6
Shippers Export Declarations	758.3, 762.2
with description of commodities	758.3 (f) & (g)
with the Export Control Classification Number(s)	758.3(h)
with the license number(s) and/or type(s)	758.3
with the Schedule B Number	758.3(g)
Air Waybills and/or Bills of Lading	762.2
with the proper destination control statement	758.6
High Performance Computer Records	742.12(a)(3), 740.3(e)(6)
Humanitarian Donations GFT records	740.12(b)(7)

Finally, for key documents, in addition to retention, the firm adopting an EMS should establish a

process to ensure that these documents are used correctly. The following text identifies those documents requiring special recordkeeping requirements.

License Exceptions for Temporary Exports (TMP):

License Exception (TEMP) authorizes the export of commodities and software for temporary use abroad. Firms should establish a process to ensure that all shipments are processed in accordance with Section 740.4 of the EAR. Accordingly, a log should be maintained to track shipments, ensure all destinations are authorized by the EAR and all items are either returned within one year or transferred according to the provisions of the EAR. Recording of the United States Customs reentry numbers may be useful in situations where items are returned to the exporter. Again, specific personnel should be assigned this responsibility.

License Exception LVS:

License Exceptions LVS authorizes the export and reexport in a single shipment of eligible commodities with limited value destined for Country Group B. Firms should establish a process to ensure that shipments do not exceed LVS limits and are in compliance with Section 740.3 of the EAR. A log should be maintained to ensure that LVS is not used more than 12 times the LVS value limit for a particular ECCN in a calendar year, to the same ultimate or intermediate consignee.

COMMENTS:

The firm with an established EMS should maintain a filing system that allows invoices, SEDs, delivery notes, and Air Waybills to be easily matched. Firms that do not receive copies of completed SEDs from freight forwarders should be cautious because this procedure does not permit review for accuracy of completed SEDs generated by the freight forwarder.

These guidelines recommend the implementation of a screening mechanism for export transactions. In adopting some of the screening elements noted within these guidelines, a firm may develop an electronic screening process. (In this case no hard copies attesting to the completion of the export control screens are present.) The exporter should have the capacity to generate hard copy results of any electronic screening. The electronic record should include data on the completion of these screens. An adequate audit trail should be maintained regardless of the recordkeeping format used.